

ROY ALAN O'GUINN

Name

POB 359 LCC

LOVELOCK, NEVADA 89419

Address

67905

Prison Number

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED

JAN 13 2005

CLERK, U.S. DISTRICT COURT

DISTRICT OF NEVADA
RECEIVED

JAN 13 2005

CLERK, U.S. DISTRICT COURT

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROY ALAN O'GUINN

Plaintiff,

vs.

JACKIE CRAWFORD, individually, and
NEVADA DEPARTMENT OF CORRECTIONS, and
THE STATE OF NEVADA.NO 11TH AMENDMENT IMMUNITY UNDER
A.D.A. AND REHAB ACTS.

Defendant(s).

AMENDED COMPLAINT

CASE NO. CV-05-0007-ECR-VPC
(To be supplied by the Clerk)AMENDED
CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

JURY DEMAND RULE 38(b) FRCP

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, Roy Alan O'Guinn
(print Plaintiff's name)
who presently resides at POB 359 LCC-67905 Lovelock NV 89419, were
(mailing address or place of confinement)
violated by the actions of the below named individuals which were directed against
Plaintiff at all NDOC facilities I was held in on the following dates
(institution/city where violation occurred)
January 2001+Continuing n/a and n/a
(Count I) (Count II) (Count III)

H

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

2) Defendant JACKIE CRAWFORD resides at NDOC POB 7011
(full name of first defendant) CARSON CITY, NV 89701
(address of first defendant)
and is employed as STATE PRISON DIRECTOR. This defendant is sued in his/her
(defendant's position and title, if any)
XX individual XX official capacity. (Check one or both). Explain how this defendant was acting
under color of law: EMPLOYEE STATE OF NEVADA, NO 11TH AMENDMENT IMMUNITY

3) Defendant NEVADA DEP'T OF CORRECTIONS resides at POB 7011 CARSON CITY NV
(full name of first defendant) (address of first defendant)
and is employed as ENTITY UNDER ADA & REHAB ACT. This defendant is sued in his/her
(defendant's position and title, if any)
XX individual XX official capacity. (Check one or both). Explain how this defendant was acting
under color of law: NO 11TH AMENDMENT IMMUNITY / ADA REHAB ACT

4) Defendant THE STATE OF NEVADA resides at c/o Dean Heller, Scty State
(full name of first defendant) Capitol Complex Carson City
(address of first defendant)
and is employed as ENTITY SUBJECT TO ADA/REHAB. This defendant is sued in his/her
(defendant's position and title, if any)
XX individual XX official capacity. (Check one or both). Explain how this defendant was acting
under color of law: ENTITY SUBJECT TO ADA/REHAB ACT NO 11TH AMEND IMMUNITY

5) Defendant N/A resides at _____
(full name of first defendant) (address of first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
XX individual XX official capacity. (Check one or both). Explain how this defendant was acting
under color of law: _____

6) Defendant N/A resides at _____
 (full name of first defendant) (address of first defendant)
 and is employed as _____ This defendant is sued in his/h
 (defendant's position and title, if any)
 _____ individual _____ official capacity. (Check one or both). Explain how this defendant was actin
 under color of law: _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

DIFFERENT: REHAB ACT TITLE 29 U.S.C. § 794 et seq., AND

AMERICANS WITH DISABILITIES ACT, TITLE 42 U.S.C. § 12101, et seq..

B. NATURE OF THE CASE

1) Briefly state the background of your case.

Plaintiff was Certified by a State District Court as Mentally-ill and incompetent [Exhibit-A], on 10-23-00. ~~This complaint does NOT challenge any conviction. The State further issued a plea agreement wherein plaintiff is promised that the "purpose" of his plea is to receive appropriate treatment and care while incarcerated [Exhibit-B].~~ Plaintiff entered the state prison system in January 2001, he has received NO treatment or care whatsoever. Plaintiff as a certified mentally-ill incompetent person is fully qualified under the two acts raised herein, has a life long documented history of his illnesses and is being denied services and benefits by the defendants solely on the basis of his disabilities, his disabilities limit major life activities. The defendants are recipients of federal funding and also cannot provide the treatment and care specifically required to properly treat and care for the plaintiff which meets the standards of the mental health field outside their state system. The defendants are not immune under the 11th Amendment under the two acts raised. Plaintiff has been physically injured within the prison system on several occasions due to other prisoners misunderstanding his mental illness and have acted out violently upon him. Plaintiff is presently in the safest prison in the system. Filed simultaneously with this complaint is a motion for appointed counsel/federal defender as plaintiff is wholly incapable of responding to even the most simple direction of this court and law clerks cannot litigate the complex and sophisticated nature of the two acts on his behalf and are not allowed to do so except to initially assist and thereafter let plaintiff do so. Plaintiff cannot do so. Also, a motion for a preliminary injunction is filed with this complaint to enjoin defendants from reacting by transferring plaintiff to any other facility until the determination of the issues in this case are resolved, and a Notice of Guardian ad litem is filed herewith.

C. CAUSE OF ACTION

COUNT I

The following civil right has been violated: _____

AMERICANS WITH DISABILITIES ACT, TITLE 42 U.S.C. § 12101 et seq.

AND REHABILITATION ACT TITLE 29 U.S.C. § 794 et seq.

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

THE NAMED DEFENDANTS, ALL OF WHOM HAVE FULL INFORMATION REGARDING
PLAINTIFF'S MENTALLY-ILL AND INCOMPETENT CONDITION, HAVE VIOLATED THE
PLAINTIFF'S RIGHTS UNDER THE TWO STATED ACTS BY DENYING PLAINTIFF
MENTAL HEALTH TREATMENT AND CARE AND HAVE DONE SO SOLELY ON THE BASIS
OF HIS DISABILITY, PLAINTIFF FULLY QUALIFIES UNDER THESE TWO ACTS
AS HAVING A DISABILITY THAT SUBSTANTIALLY LIMITS HIS MAJOR LIFE ACTIVI-
TIES, AND IS BEING DENIED THE SERVICES AND BENEFITS OF THE DEFENDANTS
SYSTEM, ALL THE DEFENDANTS BEING RECIPIENTS OF FEDERAL FUNDS, FURTHER
THE STATE OF NEVADA HAS NO DEFENSE WHATSOEVER WHERE IT ISSUED AN ORDER
CERTIFYING PLAINTIFF HAS MENTALLY-ILL AND INCOMPETENT AND ISSUED A
PLEA AGREEMENT STATING THE "PURPOSE" OF THE PLEA IS FOR PLAINTIFF TO
RECEIVE APPROPRIATE TREATMENT. SEE EXHIBITS-A, B and C, ATTACHED HERETO.

COUNT II

The following civil right has been violated: _____

N/A

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

N/A

COUNT III

The following civil right has been violated: _____

N/A

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

N/A

- NO SUITS, FEDERAL HABEAS PENDING THIS COURT

f) Approximate date of disposition: _____

- f) Approximate date of disposition: _____

- Lawsuit #3 dismissed as frivolous, **malicious**, or failed to state a claim:

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ___ Yes XX No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) ___ disciplinary hearing; (2) XXX state or federal court decision; (3) XX state or federal law or regulation; (4) ___ parole board decision; or (5) ___ other Grievance not applicable to ADA/REHAB ACT
and is not required under these acts
If your answer is "Yes", provide the following information. Grievance Number _____
Date and institution where grievance was filed _____

Response to grievance: n/a

E. REQUEST FOR RELIEF

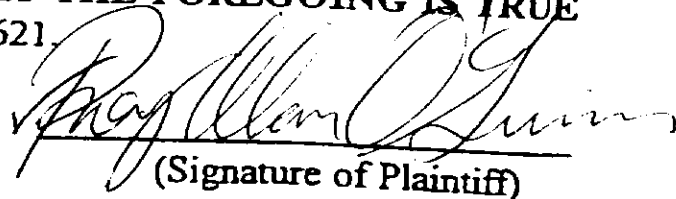
I believe that I am entitled to the following relief:

- A) DAMAGES BY JURY DETERMINATION
- B) PUNITIVE AWARD BY JURY DETERMINATION
- C) THE COSTS OF THIS ACTION WITH ALL LEGAL FEES AND EXPENSES.
- D) JURY DEMAND, RULE 38(b) FRCP
- E) PRELIMINARY INJUNCTION ENJOINING DEFENDANTS FROM TRANSFERRING PLAINTIFF FROM LOVELOCK CORRECTIONAL CENTER UNTIL THE COMPLETION OF THIS ACTION.
- F) APPOINTMENT OF COUNSEL OR FEDERAL DEFENDER FOR MENTALLY-ILL AND INCOMPETENT PLAINTIFF (CERTIFIED SEE ATTACHMENTS)

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

PRISON LAWCLERKS

(Name of person who prepared or helped prepare this complaint if not Plaintiff)


(Signature of Plaintiff)

DECEMBER 29, 2004

(Date)

(Additional space if needed; identify what is being continued)

N/A

FILED

OCT 31 4 04 PM '01

DISTRICT COURT
Shirley P. Prawalsky
CLARK COUNTY, NEVADA CLERK

THE STATE OF NEVADA,

PLAINTIFF,

ROY ALAN O'GUINN,

DEFENDANT.

CASE NO. C159730

DEPT. V

Transcript of Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

HEARING: ESTABLISH DEFENDANT'S MENTAL ILLNESS

MONDAY, OCTOBER 23, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

BRIAN KOCHEAVER, ESQ.
KRISTEN NELSEN, ESQ.
DEPUTY DISTRICT ATTORNEYS

FOR DEFENDANT O'GUINN:

JOSEPH ABOOD, ESQ.
DEPUTY SPECIAL PUBLIC
DEFENDER

COURT RECORDER: SHIRLEE PRAWALSKY, ECR 00230

EXHIBIT-A

000045

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 23, 2000, 9:00 A.M.

2 THE COURT: And, Joe, are you waiting for somebody, too?

3 MR. ABOOD: Judge, I think we can proceed with the mental health
4 hearing. It's stipulated by -

5 THE COURT: I understand. But, who's got the file? Do you folks
6 have the file on O'Guinn?

7 MS. NELSEN: I don't think we do.

8 MR. KOCHEAVER: I don't think so, Judge.

9 THE COURT: No? Okay. Just make a note of this. To fully accept
10 the guilty plea, we have to find that certain requisite times he was mentally
11 ill and incompetent. Both sides have stipulated to that and they've also
12 supplied me with about a foot of documents to review. That review leads
13 me to the conclusion that at the relevant times he was incompetent and
14 mentally ill. And therefore, I have jurisdiction to and do accept the plea of
15 guilty, but mentally ill. The sentencing date has already been set

16 Are you going to be submitting anything in addition to show
17 that at the time of sentencing he's mentally ill so that I can make requisite
18 findings then, or do you think it's sufficient what I already have?

19 MR. ABOOD: Your Honor, I think it's sufficient what you've already
20 got. And I can go through the list of documents we've provided you if
21 you'd like me to do that.

22 THE COURT: No.

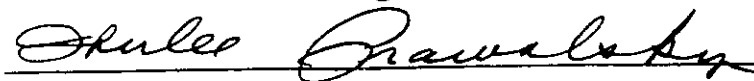
23 MR. ABOOD: Okay.

24 THE COURT: All right, thank you.

25 MR. ABOOD: Thank you, Judge.

* * * *

26 ATTEST: I do hereby certify that I have truly and correctly transcribed
27 the sound recording of the proceedings in the above case.

28 

29 SHIRLEE PRAWALSKY, COURT RECORDER, ECR 00230

1 **GMEM**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT
20
SHIRLEY B. PARRAGUIRRE, CLERK
BY
CAROLE D'ALOIA DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 ROY ALAN O'GUINN,
12 #1471925

13 Defendant.

Case No. C159730
Dept. No. V

14
15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty but mentally ill to: COUNT I and COUNT III-
17 BURGLARY (Felony - NRS 205.060), COUNT II - OPEN OR GROSS LEWDNESS (Gross
18 Misdemeanor - NRS 201.210), COUNT IV and COUNT V - SEXUAL ASSAULT (Felony-
19 NRS 200.364, 200.366) as more fully alleged in the charging document attached hereto as
20 Exhibit "1".

21 My decision to plead guilty is based upon the plea agreement in this case which is as
22 follows:

23 I acknowledge that the State is retaining its right to seek habitual criminal treatment
24 against me at the time of sentencing. I further acknowledge that the State will present to this
25 Court at the time of sentencing, evidence of my prior criminal convictions and that such
26 convictions make me eligible for habitual criminal treatment pursuant to NRS 207.010 (b) and
27 NRS 207.012. I further agree to not oppose this Court adjudging me an habitual criminal
28 pursuant to NRS 207.010(b).

↓
EXHIBIT-B

1 Pursuant to my adjudication as an habitual criminal, the State and I agree and stipulate
 2 that the Court shall sentence me to LIFE in the Nevada State Prison with parole eligibility
 3 beginning after 10 years has been served, on COUNTS I, III, IV and V.

4 The State and I further agree and stipulate that all counts in this case will be run
 5 concurrently at the time of sentencing.

6 If the Court should chose not to accept a plea of Guilty but Mentally Ill, or should choose
 7 not to impose habitual criminal treatment after the State provides the required evidence of my
 8 prior criminal convictions, or should choose not to run all counts concurrently, then either the
 9 Defendant or the State will have the right to withdraw from these negotiations and proceed to
 10 trial on the original charges.

11 My plea will be Guilty but Mentally Ill. I understand that before the Court formally
 12 accepts my plea of Guilty but Mentally Ill, it must make a determination that I was mentally ill
 13 at the time of the alleged offenses to which I am pleading. I agree that the hearing required by
 14 NRS 174.041 may be held forthwith. I further agree that, as the evidence at such hearing, the
 15 court may receive, and rely upon, all of the previously filed reports of examination and
 16 evaluation in this case, along with such additional reports, examinations or testimony as the court
 17 may choose to receive.

18 I acknowledge that a plea of Guilty but Mentally Ill is NOT a defense to the alleged
 19 offenses, and I understand that if the court accepts my plea of Guilty but Mentally Ill, I am
 20 subject to the same penalties as a defendant who pleads guilty. The purpose of my plea of Guilty
 21 but Mentally Ill is NOT to challenge the court's already entered findings of competency, but to
 22 insure that I receive appropriate treatment during my incarceration. Any attempt by myself or
 23 my counsel, either now or in the future, to assert a lack of legal competency on my part, either
 24 at the time of the offense or at the time of my plea and/or sentencing will constitute a violation
 25 of this agreement, and will entitle the State, at its option, to void this agreement and proceed to
 26 trial on the original charges.

27 CONSEQUENCES OF THE PLEA

28 I understand that by pleading guilty I admit the facts which support all the elements of

Civil Rights Division

Disability Rights Section



Title II of the Americans with Disabilities Act / Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form

Instructions: Please fill out this form completely, in black ink or type.
Sign and return it to the address on page 3.

Complainant: ROY ALAN O'GUINN

Address: P.O. BOX 359

City, State and Zip Code: LOVELOCK, NEVADA 89419 (39419)

Telephone: Home: n/a Business: [775] 273-1300

Person Discriminated Against (if other than the complainant): SAME AS ABOVE

Address: _____

City, State and Zip Code: _____

Telephone: Home: _____ Business: _____

Government, or organization, or institution which you believe has discriminated:

Name: NEVADA DEPARTMENT OF CORRECTIONS

Address: P.O. BOX 7011

County: CARSON CITY

City: CARSON CITY

State and Zip Code: NEVADA 89701

Telephone Number: [775] 487-3216

JANUARY 2001 CONTINUING

When did the discrimination occur? _____

Date: _____

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on page 3 if necessary): ~~COMPLAINANT WAS CERTIFIED MENTALLY-ILL AND INCOMPETENT BY THE EIGHTH JUDICIAL DISTRICT COURT FOR CLARK COUNTY, NV. NEVADA 10-23-02 CASE NO. 0150730, AND THE NEVADA DEPT. OF CORRECTIONS WAS ORDERED BY BOTH PLEA AGREEMENT AND FBI BY DPT OF PASLER TO PROVIDE MEDICAL HEALTH CARE AND TREATMENT OF COMPLAINANT. NONE HAS BEEN OBTAINED SINCE COMPLAINANT'S ARRIVAL AT THE DEPT. OF CORRECTIONS.~~

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization, or institution? Yes ☐ No ☒

NOT AVAILABLE FOR MENTAL HEALTH

If "yes" what is the status of the grievance?

Has this complaint been filed with another bureau of the Department of Justice or any other Federal, State or local civil rights agency or court? Yes ☒ No ☐

If "yes":

Agency or Court: U.S. DISTRICT COURT FOR NEVADA (SECOND DISTRICT)

Contact Person: LAUREN E. WILSON, CLERK

Address: 400 S. VIRGINIA STREET, SUITE 301

City, State and Zip Code: RENO, NV 89501

Telephone Number: (775) 636-5800

Date Filed: PENDING ON THE DATE OF THIS COMPLAINT

Do you intend to file with another agency or court?

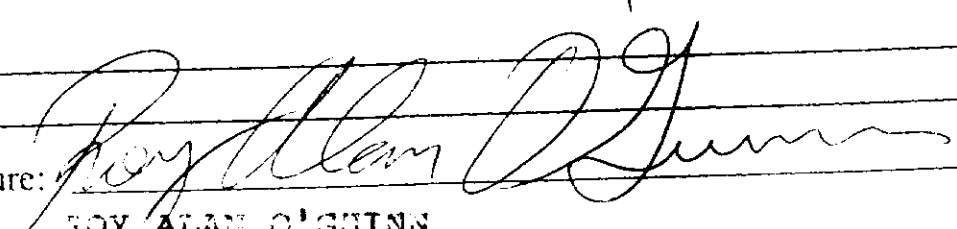
Agency or Court: UNKNOWN

Address: _____

City, State and Zip Code: _____

Telephone Number: _____

Additional space for answers: N/A

Signature: 

ROY ALAN O'GUINN

Date: _____

NOVEMBER 3, 2004

Return to :

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530